

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STEVEN MANUEL

Plaintiff

V.

BUCHANAN MARINE, L.P. and
TILCON NEW YORK INC.

Defendants

: CIVIL ACTION NO. 7:08-CV-04468 (KMK)
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**ANSWER AND AFFIRMATIVE
DEFENSES TO COMPLAINT**

FIRST COUNT

1. Admitted.
2. The plaintiff is left to his proof.
3. The plaintiff is left to his proof.
4. The plaintiff is left to his proof.
5. The plaintiff is left to his proof.
6. The plaintiff is left to his proof.
7. Denied.
8. Denied.
9. Denied.

SECOND COUNT

10. The answers to paragraphs 1 through 9 of the First Count are incorporated and made the answers hereto.

- 11. Admitted.
- 12. The plaintiff is left to his proof.
- 13. The plaintiff is left to his proof.
- 14. The plaintiff is left to his proof.
- 15. The plaintiff is left to his proof.
- 16. The plaintiff is left to his proof.
- 17. Denied.
- 18. Denied.
- 19. Denied.

THIRD COUNT

20. The answers to paragraphs 1 through 19 of the Second Count are incorporated and made the answers hereto.

- 21. Denied.

BY WAY OF AFFIRMATIVE DEFENSE **First Defense**

The fault, neglect, want of care, and inattention to duty by the plaintiff in causing the incident giving rise to this action constitute violations of the primary duty doctrine, barring the plaintiff from recovery for any resulting injuries or damages.

Second Defense

If the plaintiff sustained injuries and/or illnesses as alleged in the Complaint, his injuries and/or illnesses were caused in whole or in part by his own negligence, which injuries were not caused or contributed to in any manner by the conduct of the defendants.

Third Defense

The injuries and/or illness of the plaintiff, if any, arose out of certain risks, dangers, and hazards, all of which were open, obvious, and well known to the plaintiff at and before the time of said injuries and/or said illnesses were sustained, and all of said risks, dangers, and hazards have been assumed by the plaintiff herein.

Fourth Defense

Upon information and belief, the plaintiff failed to mitigate or otherwise act to lessen or reduce the injuries and disabilities from which he allegedly suffered.

Fifth Defense

Any recovery by the plaintiff must be reduced by collateral source payments.

Sixth Defense

If the defendants were ever on notice of any hazard or defect for which the plaintiff seeks relief, which the defendants expressly deny, the plaintiff also had such notice and is therefore barred from recovery.

WHEREFORE, the defendants demand judgment dismissing the plaintiff's Complaint with prejudice; that it be awarded costs of suit, attorneys' fees, and disbursements as against the plaintiff; and further that they be granted such other and further relief as the pursuits of justice so require.

Dated: Hartford, Connecticut
July 11, 2008

HALLORAN & SAGE LLP

By /s/
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CERTIFICATION

I hereby certify that on July 11, 2008, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following counsel of record:

For plaintiff

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 /s/
Carl R. Ficks, Jr.